

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 14 2005

SHI CHENG KE,

No. 05-74195

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

FEDERAL
COURT
District Court

OCT 21 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges

The application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2255 of:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the defendant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

See also, United States v. Cruz, No. 03-35873, 2005 WL 2243113 (9th Cir.

Sept. 16, 2005) (holding that the Supreme Court did not make *United States v.*

05-71642

Booker, 125 S. Ct. 738 (2005) retroactive to cases on collateral review to convictions that became final prior to *Booker*).

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

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